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|-----------------|-------------|----------------------|---------------------|------------------|
| 09/811,845      | 03/19/2001  | Thomas E. Chefalas   | YOR920010017US1     | 9247             |

35526 7590 02/09/2005

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| EXAMINER |
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FWLTKES, ANDRE R

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| ART UNIT | PAPER NUMBER |
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2122

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/811,845

**Applicant(s)**

CHEFALAS ET AL.

**Examiner**

Andre R. Fowlkes

**Art Unit**

2122

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This action is in response to the after final amendment filed 12/6/04.

#### *Response to Amendment*

2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

#### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole et al., (Cole), U.S. Patent No. 5,752,042.

As per claim 1, Cole discloses **a method for automatically downloading and installing software to a computer system**, (col. 1:9-10, "The invention relates generally to computer networks and deals more particularly with a technique for selecting code updates (i.e. software) stored in a server for installation in a client"), **comprising the steps of:**

- **receiving an instruction to install an item of software on the computer system** (col. 1:60-61, "A user at the client computer selects from the list and sends the selections (i.e. instruction) to the server computer"),

- **collecting data about the computer system to form collected data** (col. 1:53, "determine whether the client computer has a version other than a current version of the identified code updates (i.e. collected data)"),

- **based on the collected data, downloading a proper version of the item of software from a server** (col. 1:52-59, "recognizer programs which execute in the client computer to determine whether the client computer has a version other than a current version of the identified code updates. The client sends the results to the server computer which generates a list of code updates which are consistent with the basic system characteristics representing programs that exist on the client computer for which an update would be appropriate"),

- **installing the proper version based on the collected data, setting configuration options associated with the proper version** (col. 1:62-65, "In response, the server computer sends addresses of the selected code updates to the client computer and the client computer downloads (and installs) the selected code updates from a server computer").

As per claim 2, the rejection of claim 1 is incorporated and further, Cole discloses that **based on the collected data, determining whether the item of software can be installed on the computer system, and if the item of software cannot, then ending**

**execution of the method** (col. 1:52-59, "recognizer programs which execute in the client computer to determine whether the client computer has a version other than a current version of the identified code updates. The client sends the results to the server computer which generates a list of code updates which are consistent with the basic system characteristics representing programs that exist on the client computer for which an update would be appropriate").

As per claim 3, the rejection of claim 1 is incorporated and further, Cole discloses **submitting the collected data to a server; and receiving an analysis of the collected data, wherein the analysis specifies the proper version and the configuration options** (col. 1:52-59, "recognizer programs which execute in the client computer to determine whether the client computer has a version other than a current version of the identified code updates. The client sends the results to the server computer which generates a list of code updates which are consistent with the basic system characteristics representing programs that exist on the client computer for which an update would be appropriate").

As per claim 4, the rejection of claim 1 is incorporated and further, Cole discloses **analyzing the collected data to determine the proper version and the configuration options** (col. 1:47-49, "The server computer identifies code updates which are consistent with basic system characteristics of the client computer").

As per claim 5, the rejection of claim 1 is incorporated and further, Cole discloses **returning a confirmatory message** (col. 1:54-55, "The client sends the results to the server computer").

As per claim 6, the rejection of claim 1 is incorporated and further, Cole discloses **receiving the instruction via one of a wireless network, a local area network, an Internet, an intranet, and a wide area network** (col. 2:35-38, "Network 10 comprises a selection server 12 with a data base 13, a content server 17, clients 14-16 and an Internet 20 to interconnect the servers and clients").

As per claims 7-10, 12 & 13, this is another method version of the claimed method discussed above, in claims 1-3, 5 & 6, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

As per claim 11, the rejection of claim 10 is incorporated and further, Cole discloses that **the receiving step includes a step of receiving the instruction through a HyperText Markup Language (HTML) interface** (col. 2:47-49, "Communications between the clients and the selection server 12 utilize hypertext transport protocol (HTTP)", and HyperText Transfer Protocol is the protocol for moving hypertext (HTML) files across the Internet).

As per claim 14, the rejection of claim 7 is incorporated and further, Cole discloses **transmitting the at least one software installation agent to the at least one computer system to be installed by a user** (col. 1:49-50, "the server computer sends to the client computer one or more "recognizer" programs(i.e. software installation agent)").

As per claims 15-20, this is a product version of the claimed method discussed above, in claims 1-6, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

As per claims 21-28, this is a product version of the claimed method discussed above, in claims 1-6, 11 & 14, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

As per claims 29-32, this is a system version of the claimed method discussed above, in claims 3, 6 & 14, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting

program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

As per claim 33, the rejection of claim 29 is incorporated and further, Cole discloses that **the client computer submits the request using a HyperText Transfer Protocol (HTTP)**, (col. 2:47-49, "Communications between the clients and the selection server 12 utilize hypertext transport protocol (HTTP)").

As per claims 34-39, this is an apparatus version of the claimed method discussed above, in claims 1-6, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

As per claims 40-47, this is an apparatus version of the claimed method discussed above, in claims 1-3, 5, 6, 11 & 14, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

As per claims 48-53, this is a system version of the claimed method discussed above, in claims 1-6, wherein all claimed limitations have also been addressed and/or



cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

As per claims 54-61, this is a system version of the claimed method discussed above, in claims 1-3, 4, 5, 11 & 14, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-61 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre R. Fowlkes whose telephone number is (571) 272-3697. The examiner can normally be reached on Monday - Friday, 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571)272-3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ARF



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SUPERVISORY PATENT EXAMINER